



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 27, 2002

Mr. George D. Cato
Deputy General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR2002-7400

Dear Mr. Cato:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174175.

The Texas Department of Health (the "department") received a request for information regarding two referenced health department complaints. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you indicate that you have released "releasable documents" regarding one of the referenced complaints, and that the requestor is not "questioning anything regarding [complaint number 98-50413]." We further note that in a letter dated September 13, 2002, the department certifies that it has released all information responsive to the request for complaint number 98-50413, and that "[n]o subsequent additions, deletions, or corrections have been made to the documents." See Gov't Code § 552.232(b). Finally, you state that your request to this office concerns only complaint number 99-50413, which you have submitted to this office. Accordingly, this ruling addresses only the required public disclosure of health department complaint number 99-50413.

We next address the department's obligations under section 552.301. Pursuant to section 552.301(b), a governmental body must ask the attorney general for an opinion and state the applicable exceptions not later than the tenth business day after receiving the written request for information. Additionally, pursuant to section 552.301(e), a governmental body that receives an open records request for information that it wishes to withhold under one of the exceptions to public disclosure is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written

request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which part of the documents. The department failed to ask the attorney general for an opinion within ten business days after receiving the request for information. Further, the department failed to timely submit to this office written comments stating the city's reasons for claiming an exception to disclosure, a copy of the written request for information, evidence showing the city's receipt of the request, and a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which part of the documents. Thus, the department has not complied with section 552.301, as you acknowledge.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. Of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Generally, a compelling reason sufficient to overcome the section 552.302 presumption of openness exists only where the information is confidential by law or its release implicates third party interests. *See, e.g.*, Open Records Decision No. 150 (1977). As section 552.101 can provide a compelling reason to overcome the presumption of openness, we will consider your argument under that exception.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that is made confidential by other statutes. You claim that health department complaint number 99-50413 is confidential under section 552.101 in conjunction with section 261.201 of the Family Code. Section 261.201(a) of the Family Code provides in relevant part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You indicate that health department complaint number 99-50413 relates to the report and investigation by the department of a complaint of abuse or neglect of a child in a facility licensed by the department. You state that rule 1.207 of chapter 25 of the Texas Administrative Code, which references section 261.201, does not permit the submitted information to be released to this requestor. Based on your representations and our review of the submitted information, we conclude that health department complaint number 99-50413 is confidential under section 261.201(a) of the Family Code. *See also* Open Records Decision No. 440 at 2 (1986) (discussing predecessor statute). Therefore, the department must withhold this information from the requestor under section 552.101 of the Government Code. As we base our ruling on section 552.101 in conjunction with section 261.201 of the Family Code, we need not address your remaining arguments against disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body.

Id. § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/lmt

Ref: ID# 174175

Enc: Submitted documents

c: Ms. Robbie Kidwell
1521 East 6th Street
Tyler, Texas 75701
(w/o enclosures)